IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 550 OF 2006

BPL LTD. & ORS. .. PETITIONERS

Versus

INDUSIND BANK LTD. & ANR. RESPONDENTS

Mr. B.Francis with Mr. Subodh Desai with Rekha Tawde i/b O. P. Soni & Co. for petitioners

Smt. Vandana Jaisinghani for R-1

Mrs. M. M. Deshmukh, APP

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 8/11/2006

P.C.

. In this petition under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner has prayed that proceedings of C.C. No. 7108/S/2002 pending before the Metropolitan Magistrate, 10th Court, Mumbai be quashed and set aside.

2. It appears that the 1st petitioner company had borrowed several crores of rupees from various banking and financial institutions. According to

the petitioners due to circumstances beyond their control there was a set back to the 1st petitioner company and the petitioners incurred heavy losses, and as a result of that some of the creditors initiated criminal proceedings against the petitioners.

3. Respondent 1 is one of such creditors. Respondent 1 filed the instant criminal complaint against the petitioners in the 10th Court of Metropolitan Magistrate, Andheri under Section 138 of the Negotiable Instruments Act.

4. It is further the case of the petitioners that the management of the petitioners decided to have a compromise with its creditors by a scheme sanctioned by the Company Court under Section 391 of the Companies Act, 1956 ("the said Act" for short).

5. The petitioners filed Company Petition No. 13 of 2005 before the Kerala High Court in 2005. The Kerala High Court allowed the company petition and a scheme for restructuring the civil liability of the 1st petitioner came to be sanctioned. The order of the Kerala High Court is dated 23/8/05.

6. It appears that an appeal was carried from the said order before the Division Bench of the Kerala High Court and that appeal also came to be dismissed.

7. The petitioner preferred an application before the learned Magistrate before whom the complaint is filed by the 1st respondent praying that in view of the fact that scheme for restructuring of the petitioners' debts has been sanctioned by the Kerala High Court, the complaint be dismissed. The said application was rejected by the learned Magistrate by the impugned order dated 3/12/05 and hence this petition.

8. I have heard at considerable length Mr. Desai, the learned counsel appearing for the petitioners. The learned counsel placed heavy reliance on the judgment of the Kerala High Court sanctioning the scheme. He submitted that on the effectiveness of the scheme of arrangement legal debt and liability which existed prior to the scheme of arrangement stand terminated and the rights and obligations and liabilities of the parties would be governed by the said scheme of arrangement. The learned counsel

further submitted that the legal debt which existed under the impugned cheques would then stand negated and would be replaced by the approved scheme.

9. He drew my attention to the relevant paragraphs from the judgment of the Kerala High Court and contended that these paragraphs clearly indicate that the rights and liabilities of the parties shall now be governed by the terms of scheme of arrangement and hence criminal proceedings cannot be allowed to be continued. Following is the paragraph on which heavy reliance is placed by the learned counsel:

> "Any legal or other proceedings pending against the Petitioner Company in India or Abroad relating to any of the outstanding debts of the petitioner company to the Secured Creditors and preference share holders shall on the effectiveness of the scheme of arrangement, be terminated and the rights, obligations and liabilities of the parties shall be governed by the terms of scheme of arrangement".

10. As against this the learned counsel for respondent 1 contended that no case is made out for quashing of the proceedings. In support of her submission she relied on the decision of the Supreme Court in **Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631** and a judgment of this court in **State of Tamil Nadu v. Uma Investments Pvt. Ltd., 1977 Company Cases Vol. 47, page 242** and stated that the present petition is totally misconceived.

11. In my opinion, a scheme meant for restructuring civil liability cannot result in erasing the criminal offence. The criminal complaint filed under Section 138 of the Negotiable Instruments Act cannot be dismissed on that count. The observations of the Kerala High Court on which reliance is placed by the learned counsel for the petitioner have been torn out of context. In fact in paragraph 43 of the said judgment after considering the relevant cases on the point, the Kerala High Court has observed that proceedings pending before the criminal court pursuant to complaint filed under Section 138 of the Negotiable Instruments Act, cannot be stayed in exercise of powers under Section 391 (1) of the Companies Act.

12. I concur with the learned Magistrate when he observes that the petition before the Kerala High Court and also the order of the Kerala High Court refer to the restructuring of the civil liability and it is nowhere categorically stated by the Kerala High Court that the scheme should result in stay of the criminal proceedings. In this connection it is necessary to refer to the observations of the Supreme Court in **Rajneesh Aggarwal's case (supra)**. While considering the effect of any payment made subsequent to the commission of offence under Section 138 of the Negotiable Instruments Act, the Supreme Court has observed that once the offence is committed any payments made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. The Supreme Court further observed that by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the court. Therefore, the accused cannot avoid the liability of offence under Section 138 of the Negotiable Instruments Act, on the spacious ground that the liability is restructured under the scheme

and the payments will now be made to the creditors.

13. I may also usefully refer to the judgment of this Court in **Uma Investments' case (supra)** where this court has observed that Section 391 of the said Act, does not provide an umbrella to a company or its directors and officers for a thing which is an offence or an infringement or violation of any law, rule or regulation punishable by imprisonment or fine or both. Such criminal proceedings can be commenced or continued notwithstanding the fact that a scheme for compromise of arrangement has been initiated under Section 391 of the Companies Act.

14. In view of the above, in my opinion, there is no substance in the petition. Petition is dismissed.

15. Needless to say that in view of the above order the interim relief granted by this court stands vacated. The trial shall now proceed. The parties to appear before the trial court on 11th of December, 2006.

16. Certified copy expedited.

JUDGE.